

**July 12, 2004**

**Department of Health and Human Services  
5600 Fishers Lane  
Rockwall II  
Suite 815  
Rockville, MD 20857**

**RE: Docket Number 04-7984  
HHS Drug Testing Procedures**

**Statement of United Transportation Union**

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The United Transportation Union hereby objects to the proposed changes in the mandatory drug testing regulations. The UTU represents operating employees in the railroad industry and is the largest railroad union covered by the existing regulations. UTU recognizes it will not be directly covered by the current proposal. However, it is clear that once this rule is promulgated, the next group to be covered will be the nation's transportation employees. Therefore, UTU believes it has a direct interest in the outcome of this proposal.

The NPRM is deficient in many respects and UTU will comment on our major concerns. The primary concern is that the state of the science is not such that it can be accurate to the degree necessary for credible and verifiable testing. The studies mentioned by HHS in support of the regulation are conflicting, and raise very serious concerns, such as the appropriate cutoffs with each type of proposed test. Also, much of the data HHS relies upon is not taken from peer reviewed studies. Rather, it appears to be from incomplete industry data or marketing material. This is not the proper basis for such a regulation.

Additionally, HHS needs to have valid comparisons made between each of the type tests. For example, can each test credibly determine drug usage? To date, the studies do not support such a conclusion.

## Hair Testing

The most glaring problem with this type test is that the color of the person's hair can create a different result. Dark hair absorbs more drug by-products than light hair. This, of course, raises significant racial issues. Unlike other current testing, this type of test cannot determine relatively recent drug usage. It takes days for the drug to diffuse from the blood stream to the hair follicle. Also, the environment contaminants can impact the results.

The studies relied upon by the HHS raises more concerns than are answered. Out of the 15 studies mentioned, 12 demonstrate that the color of hair poses a problem in interpreting the test result. Most of the studies show that those with black hair is more likely to test positive than persons with light hair. This certainly raises a racial bias issue.

It is unfortunate that an agency such as HHS has taken such limited and conflicting data and concluded that hair testing is appropriate. Much more needs to be done in detailed peer reviewed studies before such a program is imposed.

## Sweat Test

This type test is proposed for return to duty and follow up testing. It may require an employee to wear a patch for more than a week. Some people are allergic to such a patch. Moreover, a majority of the sweat patch technology has not been approved by the FDA.

## Saliva

This is proposed to be used for post accident and reasonable suspicion testing. A problem with this technology is that it has been in use a very short period of time, and there is very little data concerning the accuracy and validity of procedures to be followed. Additionally, as with hair testing, saliva is subject to environmental contamination. For example, if someone in the room is smoking marijuana, the fumes can be inhaled.

## Point of Collection Testing

UTU opposes point of collection testing as proposed. There are no training requirements for the collectors, which usually are the lowest paid in the drug testing chain of persons involved in the drug testing. This could create the potential for many errors, at the expense of the donor. The two papers relied upon that the

error rate for laymen and lab technicians are about the same do not support SUCH a conclusion. One paper showed that the laymen caused 10 times more false positives than the technicians. The other paper showed laymen committed 3 times more errors than the technicians. However, the laymen there were police officers and were certainly more reliable than the run of the mill collectors.

The other problem with such collection is that the device used for collection need only be 80% accurate. Twenty per cent of our members could lose their job because of inaccuracies in the device. We must be assured that every collection is accurate, and there is nothing in the proposal to require this..

There is no accountability built in regarding the collector. The requirements should be no less strict than those currently imposed for other drug testing. The qualifications of the collectors should be equivalent to the laboratory testers.

Sincerely yours,

Paul C. Thompson, President  
United Transportation Union